

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

CONSERVATION LAW FOUNDATION, INC. :

Plaintiff, :

v. :

JOHN J. JALBERT, :
d/b/a METHUEN MOTOR MART CO., and :
JOHN J. JALBERT, JR. :
Defendants. :

Case No. 1-13-cv-11955-JGD

PROPOSED

CONSENT DECREE

WHEREAS, Plaintiff Conservation Law Foundation, Inc. (“CLF”) filed this action against Defendant John J. Jalbert, doing business as Methuen Motor Mart Co. (“Methuen Motor Mart”), alleging violations of the Clean Water Act, 33 U.S.C. §§ 1251 *et seq.*, and seeking declaratory and injunctive relief, civil penalties, and attorneys fees and costs;

WHEREAS, Methuen Motor Mart owns and operates an automobile salvage yard facility located at 469 Merrimack Street Methuen, MA 01844 (the “Facility”);

WHEREAS, the Facility has implemented control measures to prevent stormwater discharges to the Merrimack River;

WHEREAS, CLF is a regional, nonprofit environmental organization;

WHEREAS, CLF and Methuen Motor Mart (collectively, “the Parties” or individually “Party”) agree that resolution of this matter without further litigation is in the best interest of the Parties and the public, and that entry of this Decree is the most appropriate means of resolving this action; and

WHEREAS, the Parties have agreed that John Jalbert Jr. shall be dismissed with prejudice from this action simultaneously with the entry of this Decree and a form of dismissal with prejudice is attached hereto at Exhibit 1;

NOW, THEREFORE, without the trial of any issue of fact or law, without the admission by Methuen Motor Mart of any of the facts or violations alleged in the Complaint, upon consent of the Parties, and upon consideration of the mutual promises contained herein,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

I. JURISDICTION AND VENUE

1. Jurisdiction over this action is conferred by 28 U.S.C. § 1331 (federal question) and 33 U.S.C. § 1365(a) (Clean Water Act jurisdiction). An actual, justiciable controversy exists between Plaintiff and Defendant. The requested relief is proper under 28 U.S.C. § 2201, 28 U.S.C. § 2202 and 33 U.S.C. § 1365(a).

2. Venue is properly vested in this Court pursuant to 33 U.S.C. § 1365(c)(1), because the events giving rise to this action occurred at the Methuen Motor Mart facility, located at 469 Merrimack Street Methuen, MA 01844, and in the Merrimack River Watershed, which are located within this judicial district.

II. COMPLIANCE PROGRAM

3. Methuen Motor Mart will maintain the berm along the boundary of the Facility closest to the Merrimack River and prevent any discharges of stormwater associated with industrial activity to the Merrimack River during precipitation and snowmelt events up to and including a 100-year storm event..

III. MONITORING PROGRAM

4. During the life of the Decree, CLF, through representatives, may conduct up to three (3) unannounced site inspections at the Facility to confirm that the berm along the boundary of the Facility closest to the Merrimack River is being maintained. During the site inspections, CLF representatives may take photos at the Facility.

IV. SUPPLEMENTAL ENVIRONMENTAL PROJECT

5. Methuen Motor Mart shall make a Supplemental Environmental Project ("SEP") payment of twenty thousand dollars (\$20,000) to Groundwork Lawrence, 60 Island Street, Lawrence, MA 01840, for environmental restoration of or other environmental benefit to the Merrimack River watershed. Methuen Motor Mart shall notify CLF in writing when a payment is made and provide copies of the checks. The SEP payments shall be made according to the following schedule:

- a. \$10,000 on or before June 30, 2019
- b. \$10,000 on or before June 30, 2020

6. None of the SEP payments shall be dispersed to CLF.

V. LIQUIDATED ATTORNEY FEES AND COSTS

7. Methuen Motor Mart shall pay to CLF a sum of thirty thousand dollars (\$30,000) as full and complete satisfaction of CLF's claim for attorneys' fees and costs incurred to date. The liquidated fees and costs shall be paid according to the following schedule:

- a. \$10,000 on or before June 30, 2016
- b. \$10,000 on or before June 30, 2017

c. \$10,000 on or before June 30, 2018

8. In the event that any payment owed by Methuen Motor Mart under the Decree is not made on or before the due date, Methuen Motor Mart shall be deemed in default of its obligations under the Decree. In addition to a continued requirement to make said payment, Methuen Motor Mart will pay to CLF liquidated attorney fees of one hundred dollars (\$100) for every day that the payment is late.

VI. EFFECT OF DECREE

9. CLF covenants not to sue and releases and discharges John J. Jalbert, doing business as Methuen Motor Mart Co. (and its/his parent corporations, subsidiaries, officers, directors, shareholders, employees, agents, and consultants) from any and all claims, causes of action, or liability under Section 505 of the Clean Water Act, 33 U.S.C. § 1365 for damages, penalties, fines, injunctive relief, or any other claim or relief (i) relating to or resulting from noncompliance with the Clean Water Act and/or the MSGP at the Facility occurring prior to the date the Court enters this Decree or (ii) for any past violations alleged in the Complaint.

10. John J. Jalbert, individually and doing business as Methuen Motor Mart Co., releases and discharges CLF, its representatives, assigns, agents, employees, officers, and attorneys, including those who have held positions in the past from any and all claims, liability, demands, penalties, costs, and causes of action of every nature which concern actions taken prior to the date the Court enters this Decree.

11. Neither this Decree, nor terms thereof, nor performance of the terms thereunder by Methuen Motor Mart shall constitute or be construed as an admission or acknowledgment by Methuen Motor Mart of the factual or legal assertions contained in this Decree or in CLF's Complaint, and Methuen Motor Mart retains the right to controvert in any subsequent proceedings, other than proceedings for the purpose of implementing or enforcing this Decree, the validity of the facts or determinations contained in this Decree or the Complaint. Neither this Decree, nor terms thereof, nor performance of the terms thereunder, shall constitute or be construed as an admission or acknowledgment by Methuen Motor Mart of any liability, or an admission of violation of any law, by Methuen Motor Mart or by its officers, directors, employees, agents, successors, or assigns.

12. CLF does not, by consent to the Decree, warrant or aver in any manner that Methuen Motor Mart's compliance with this Decree will constitute or result in compliance with federal or state law or regulation. Nothing in this Decree shall be construed to affect or limit in any way the obligation of Methuen Motor Mart to comply with all federal, state, and local laws and regulations governing any activity required by this Decree.

VII. REVIEW AND TERM OF DECREE

13. The Parties recognize that, pursuant to 33 U.S.C. § 1365(c)(3), this Consent Decree cannot be entered until forty-five (45) days after the receipt of a copy of the proposed Consent Decree by the United States Attorney General and the EPA. Therefore, upon signing of this decree by the Parties, CLF shall serve copies of this Decree upon the EPA Administrator, the Regional EPA Administrator, and the Attorney General for review, as required by 40 C.F.R. § 135.5.

14. Upon the expiration of the forty-five-day review period provided by 33 U.S.C. § 1365(c)(3), the Parties will jointly move the Court for entry of this Decree. This Decree shall take effect on the date it is entered by this Court and shall terminate on June 30, 2020, or upon completion of all payments under Sections IV and V, above, whichever comes later. If for any reason the Court should decline to approve this Decree in the form presented, the Parties agree to continue negotiations in good faith in an attempt to cure any objection raised by the Court to entry of this Decree.

VIII. MODIFICATION AND ENFORCEMENT OF DECREE

15. This Decree may be modified only upon written consent of the Parties and the approval of the Court.

16. This Court shall retain jurisdiction over this matter and allow this action to be reopened for the purpose of enabling the Parties to this Decree to apply to the Court for any further order that may be necessary to construe, carry out, enforce compliance and/or resolve any dispute regarding the terms or conditions of this Decree.

IX. MISCELLANEOUS PROVISIONS

17. This Decree shall remain in effect if Methuen Motor Mart relocates the Facility to a different location.

18. Sections I, IV, V, VI, VII, and VIII of this Decree shall remain in effect if Methuen Motor Mart ceases to be the operator of the Facility, regardless of whether the Facility continues to operate or not.

19. All payments pursuant to this Decree shall be made in form of a certified bank check.

20. Each person signing this Decree represents and warrants that s/he has been duly authorized to enter into this Decree by the Party on whose behalf it is indicated that the person is signing.

21. Entire Agreement. This Decree constitutes the entire agreement among the Parties concerning the subject matter hereof and supersedes all previous correspondence, communications, agreements and understandings, whether oral or written, among the Parties.

22. Notices. Any notice, demand, copies of documents and other communications required to be made under the provisions of this Decree (collectively, "Notices") by any Party hereto shall be effective only if in writing and (a) emailed, (b) personally served, (c) mailed by United States registered or certified mail, return receipt requested, postage prepaid, or (d) sent by a nationally recognized courier service (i.e., Federal Express) for next-day delivery, to be confirmed in writing by such courier. Notices shall be directed to the Parties at their respective addresses set forth below. Notices given in the foregoing manner shall be deemed given when (a) sent via email, (b) actually received or refused by the party to whom sent if delivered by courier, or (c) if mailed, on the day of actual delivery as shown by the addressee's registered or certified mail receipt or at the expiration of three (3) business days after the date of mailing, whichever first occurs.

Notices for Plaintiff shall be sent to:

Zachary K. Griefen, Esq.
Conservation Law Foundation
15 East State Street, Suite 4
Montpelier, VT 05602
zgriefen@clf.org
Attorney for CLF

Notice for Methuen Motor Mart shall be sent to:

John J. Jalbert, Sr.
Methuen Motor Mart Co.
469 Merrimack Street
Methuen, MA 01844

With a copy to:

Donald L. Anglehart
Law Office of Donald L. Anglehart LLC
One Broadway, 14th Floor
Cambridge, Massachusetts 02142
don@anglehart.com
Attorney for Methuen Motor Mart

Each Party shall promptly notify the other Party of any change in the above-listed contact information by using the procedures set forth on this paragraph.

23. Authorization. Each person signing this Decree represents and warrants that s/he has been duly authorized to enter into this Decree by the Party on whose behalf it is indicated that the person is signing.

24. Successors and Assigns. This Decree shall be binding upon and inure to the benefit of the Parties and their respective representatives, heirs, executors, administrators, successors, officers, directors, agents, attorneys, employees and permitted assigns.

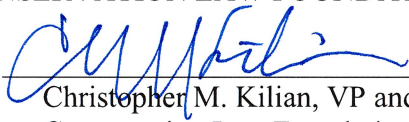
25. Interpretation. The provisions contained herein shall not be construed in favor of or against any Party because that Party or its counsel drafted this Decree, but shall be construed as if all Parties prepared this Decree, and any rules of construction to the contrary are hereby specifically waived. The terms of this Decree were negotiated at arm's length by the Parties hereto.

26. Headings. The section and paragraph headings contained in this Decree are for reference purposes only and shall not affect in any way the meaning or interpretation of this Decree.

27. Counterparts. Facsimile, electronic and scanned signatures shall be deemed to be originals for all purposes. Copies of the original Agreement, whether transmitted by facsimile or other means, shall be effective. This Agreement may be signed in counterparts.

28. Severability. In the event that any of the provisions of this Decree are held by a court to be unenforceable, the validity of the enforceable provisions shall not be adversely affected.

CONSERVATION LAW FOUNDATION, INC.

By:  Date: 4/14/15
Christopher M. Kilian, VP and Director
Conservation Law Foundation
15 East State Street, Suite 4
Montpelier, VT 05602
(802) 223-5992 x4011
ckilian@clf.org

METHUEN MOTOR MART CO.

By: _____ Date: _____
John J. Jalbert, Sr.
Owner
469 Merrimack Street
Methuen, MA 01844

ENTERED and DATED this ____ day of _____, 2015

Honorable Judith G. Dein
United States Magistrate Judge

CONSERVATION LAW FOUNDATION, INC.

By: _____ Date: _____

Christopher M. Kilian, VP and Director
Conservation Law Foundation
15 East State Street, Suite 4
Montpelier, VT 05602
(802) 223-5992 x4011
ckilian@clf.org

METHUEN MOTOR MART CO.

By: John J. Jalbert Date: 4/15/2015

John J. Jalbert, Sr.
Owner
469 Merrimack Street
Methuen, MA 01844

ENTERED and DATED this ____ day of _____, 2015

Honorable Judith G. Dein
United States Magistrate Judge